



Australian Government

WATER  
RATING

# WELS Compliance and Enforcement Strategy

## Our focus for 2018 to 2020

Water Efficiency Labelling and Standards Regulator

December 2017

The Water Efficiency Labelling and Standards (WELS) scheme is an Australian Government initiative in partnership with state and territory governments.



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# Introduction

The Water Efficiency Labelling and Standards (WELS) scheme is Australia's urban water-saving scheme that specifies and enforces efficiency standards and labels on water-using appliances, fixtures and fittings. The scheme is an industry-government partnership that encourages advances in and adoption of water-saving technologies. WELS helps business and consumers to make decisions that reduce household water use and save money on water and energy bills.

The *Water Efficiency Labelling and Standards Act 2005* (WELS Act) requires all WELS products to be registered and labelled in accordance with the WELS standard, AS/NZS 6400:2016 Water efficient products—Rating and labelling. A high level of industry compliance with these requirements is necessary to ensure the scheme delivers on the objectives of the WELS Act, which are to:

- Conserve water supplies by reducing water consumption
- Provide information for purchasers of water-use and water-saving products
- Promote the adoption of efficient and effective water-use and water-saving technologies.

Widespread compliance is also important to ensure that all businesses pay their fair share of scheme operating costs. Eighty per cent of WELS funding comes from industry registration fees, and businesses that pay to register all their products in keeping with scheme requirements should not be disadvantaged relative to a minority that do not pay.

# A risk-based, responsive approach to compliance and enforcement

The WELS Act requires the scheme to be reviewed every five years. The third recommendation of the 2015 second independent review of the WELS scheme (2015 WELS review) was that 'compliance and enforcement activities should move to a risk-based approach'. This should include:

- development of a risk-based compliance and enforcement framework (developed in consultation with industry)
- improved education, assistance, support and advice for industry to enable stakeholders to meet their legal obligations under the WELS Act 2005, without the need to escalate costly enforcement actions.

The WELS Regulator has since published a WELS Compliance and Enforcement Policy, which sets out the approach taken by the Regulator to maximise compliance with the WELS Act. The Policy establishes a responsive approach to regulation. When non-compliance is suspected or detected, education and support are provided. Enforcement tools such as compliance audits, infringement notices or court action are only employed when a cooperative approach has been unsuccessful.

The Policy also sets out underpinning principles, including undertaking compliance and enforcement actions in a manner that is proportionate to the risks, cost effective, maximises compliance and achieves the objectives of the WELS Act. The aim is to combine a responsive approach to non-compliant entities with a risk-based approach to application of resources and enforcement tools.

There are two key aspects to a risk-based approach:

- ensuring that compliance and enforcement resources are directed to the types of businesses and types of non-compliance that pose the greatest risk to the scheme
- ensuring decisions about applying specific compliance and enforcement tools are made in a manner that takes into account the risk posed to the scheme by the non-compliance.

# Industry consultation

Industry consultation was undertaken to identify areas where compliance and enforcement efforts should be directed over the three years from 2018 to 2020. Industry is well-positioned to help identify which aspects of non-compliance pose the greatest risks to meeting scheme objectives.

The consultation was open from 23 May 2017 to 14 July 2017. Industry was asked to provide their views on:

- the level and breadth of compliance with the requirements of the WELS Act
- existing risks of non-compliance to the WELS scheme
- emerging or potential future risks to the WELS scheme
- other relevant information or comments.

Thirteen submissions were received. While submissions were made in-confidence, the content of the submissions has been pooled, summarised and published in the accompanying Compliance and Enforcement Consultation Summary.

# Areas identified for compliance focus

## Outcomes of industry consultation

The content of all submissions was summarised in a separate paper. Key areas of risk identified for focus were:

- online sales and changes to the supply chain
- the need for regulators to work cooperatively, including across WaterMark, WELS and the Plumbing Code of Australia
- product substitution and verification of test results
- the need to educate suppliers and minimise compliance costs, particularly for small businesses.

## Online sales and changes to the supply chain

Over three quarters of submissions identified an aspect of online sales or changes to the supply chain as significant areas of risk. This linked to several related risks that were also raised:

- Building industry entities sourcing products directly from overseas
- The emergence of modular bathroom and kitchen units, and entire modular houses
- Consumers sourcing products directly from overseas
- Overseas suppliers not understanding and/or not applying the WELS legislation.

## The need for regulators to work cooperatively, including across WaterMark, WELS and the Plumbing Code of Australia

Plumbing products regulated by WELS also fall under regulation of the building, plumbing and construction industry at the national, state and territory, and local levels.

The Plumbing Code of Australia is now part of the National Construction Code (NCC), which requires certain plumbing and draining products to be certified by the WaterMark scheme to ensure they are fit for purpose and appropriately authorised for use in plumbing and drainage installations. Showers, taps, flow controllers, urinals and toilets must have WaterMark certification before they can be registered with WELS.

State, territory and local building regulators are responsible for certifying new buildings and renovations and ensuring compliance with the NCC. Within certification schemes it is the responsibility of licenced plumbers to ensure plumbing installations comply with the NCC, including that products have appropriate WaterMark certification.

WELS requirements are very different to WaterMark in that WELS legislation applies at the point of sale or supply, and responsibility for compliance rests with anyone who supplies the products at any point in the supply chain.

Several submissions requested better coordination across these different areas of regulation, better cooperation across regulators, and education of plumbers to understand responsibilities under WELS legislation.

## **Product substitution and verification of test results**

Products must be tested against the appropriate standards by a National Association of Testing Authorities (NATA)-accredited laboratory or an affiliated international body before they can be registered with WELS. However, there is some evidence that in some circumstances product manufacturing may change during production and products may no longer meet performance claims.

## **The need to educate suppliers and minimise compliance costs, particularly for small businesses**

A number of submissions cited a need to better inform a range of stakeholders of their WELS obligations. Recommended target audiences raised in different submissions were plumbers, builders and developers, overseas suppliers and small to medium sized businesses.

This consultation outcome aligns closely with the recommendation from the 2015 WELS review to provide improved education, assistance, support and advice to help industry meet their legal obligations under the WELS Act.

## **Current areas of focus for WELS compliance**

Current WELS compliance and enforcement activities have been informed by stakeholder input and the outcomes and recommendations of the 2015 WELS review. Activities aim to ensure broad compliance continues and that consumers and industry retain confidence in the scheme. Areas of focus are:

- Online sales, including by working cooperatively with eBay
- Addressing widespread non-compliance in the building industry (a new area of focus in 2017)
- Ongoing case work based on in-store and online inspections, aimed at ensuring that purchased products match the consumption information
- Improving communication and education tools, such as updating the water rating website, publishing a quarterly newsletter, developing communication tools for specific industries or audiences, and increasing work directly with suppliers and peak industry bodies such as presenting at seminars, workshops and franchisee meetings.

## **Strategies to focus on for 2018 to 2020**

The following strategies address the key issues raised in the industry consultation as well as the agreed recommendations of the 2015 WELS review.

### **Strategy 1: Continue inspections and follow-up activities with a range of businesses, with a stronger focus on online sellers.**

The program of ongoing inspections and follow-up of Australian retailers, both in-store and online, will be continued, with online sales remaining a strong area of focus.

Current cooperative work with eBay is highly successful in reducing online non-compliance. This will be expanded as much as is feasible to include other major online sales sites.

## **Strategy 2: Address widespread non-compliance in the building industry and expand the building industry project to include modular units.**

A large number of products regulated by the WELS scheme are supplied to consumers as part of new buildings or units. Approximately 17,000 new homes and units are built in Australia every month and decisions about the water efficiency of fittings, fixtures and appliances in these homes will have implications for community water use for many years.

Inspections of display suites in capital cities in 2017 found very few suites complied with WELS labelling requirements. It appeared that builders, developers and real estate agents were unaware that they have obligations under the WELS scheme.

In addition to supplying unlabelled products, some builders and developers may be supplying unregistered products and/or products that do not comply with other requirements such as WaterMark certification. This may be more likely when builders or developers import products directly from overseas and is part of a broader issue of non-conforming or non-compliant building products.

The focus of this strategy will be initially to increase industry awareness and encourage widespread compliance. As the industry becomes broadly compliant with labelling requirements, greater focus can be directed to businesses that supply unlabelled and unregistered products.

## **Strategy 3: Continue communicating WELS requirements with industry. Improve products and tools for communication, education and industry support; ensure tools are effective for a range of suppliers of WELS products; and participate in industry seminars, workshops and conferences.**

Communication and education are critical to maintain high levels of compliance and reduce the costs to industry of complying. This was emphasised in both the industry consultation and the 2015 WELS review.

The water rating website ([www.waterrating.gov.au](http://www.waterrating.gov.au)) was updated in November 2017 to better assist industry in meeting registration and labelling requirements. The updated website is also mobile and tablet compatible and meets accessibility requirements.

Additional tools that will be considered for development include:

- foreign language material to communicate requirements with overseas manufacturers or suppliers
- videos and animations for both Australian and overseas suppliers
- targeted advertising
- enhancements to the WELS database to make it easier for businesses to check and track product registrations
- an app or similar mechanism to enable plumbers or others in the field to quickly check a product's WELS registration.

In 2017 WELS staff participated in industry conferences, meetings of peak industry bodies, and internal forums hosted by large companies supplying WELS products. Staff will continue to make themselves available for industry meetings or conferences when feasible and welcome industry support in arranging WELS staff to speak to their stakeholders.

If WaterMark moves to point of sale requirements, there will also be opportunities for joint communication and education activities.

**Strategy 4: Apply WELS compliance and enforcement tools in a risk-based, responsive, consistent manner to effectively address non-compliance and increase visibility of WELS regulation in the Australian market.**

It is important to educate and support suppliers and minimise the costs of compliance to businesses. However, it is also important to address persistent, high-risk non-compliance through enforcement action. This acts as a deterrent and sends a clear signal to regulated entities that the potential costs of non-compliance outweigh any perceived savings they might obtain from not complying.

This strategy will be achieved by targeting monitoring activities to areas of higher scheme risk. When non-compliance is identified, a responsive approach will be applied, seeking first to educate non-compliant entities and providing tools and support. Enforcement options will be employed when non-compliance cannot be resolved cooperatively. In these instances, consistent, risk-based decision frameworks will be used to select appropriate enforcement tools from the range available to the WELS Regulator under the WELS Act. Decision frameworks will be made public to increase regulatory transparency, when doing so will not compromise outcomes.

**Strategy 5: Streamline activities and increase cooperation with other regulators.**

The 2015 WELS review recommended establishing a cooperative compliance program with state and territory consumer affairs departments or similar. WELS staff have since made contacts in departments responsible for consumer affairs in most states and discussed ways to share information and/or refer cases. These linkages will be progressed and utilised as appropriate.

WELS and WaterMark staff have been working cooperatively and WELS staff have also communicated with the Plumbing Code Committee about ways to increase consistency across requirements. This will be progressed through Standards Australia standards committees and through further discussions with the Plumbing Code Committee and state and territory plumbing administrations.

In addition to increasing consistency across requirements, WELS staff will also seek to increase cooperation on compliance matters with state and territory plumbing and building administrations and building and plumbing certifiers. If this works effectively, WELS inspectors will provide intelligence to state and territory regulators. Building certifiers and state and territory regulators will help to educate builders and plumbers and will refer WELS non-compliance to WELS inspectors.

Some consultation submissions mentioned a possible change to the WaterMark scheme to apply regulation at the point of sale. If this progresses, WELS will continue to provide advice to WaterMark administrators about how point of sale regulation works for WELS, and will explore mechanisms for joint compliance approaches.

Methods for streamlining WELS compliance and enforcement processes will also be explored. Options to consider are the feasibility of automated screening of online listings of WELS products; automating the management of WELS compliance cases and decision records; and using decision tools to streamline enforcement decisions and ensure consistency in applying risk-based decision-making.

**Strategy 6: Consider developing and implementing a product check-testing program.**

Products must be tested for water efficiency before they can be registered with WELS, and registrants must notify the Regulator if a product is altered in a way that affects its performance. However, there is currently no provision in place to monitor whether products continue to meet performance claims. Showers and taps are particularly vulnerable to production changes, including through substitution or omission of the flow controller. This can have a large impact on the flow rate, but because the flow controller is often not visible, this cannot be checked in routine in-store inspections or through photographs.

A regular system of check-testing, particularly for taps and showers, would combat this problem. Products would be purchased and tested in a NATA-accredited laboratory and the flow rate compared to that submitted with the application for WELS registration. Where substantial differences are detected, product registration can be suspended or cancelled and further investigation or enforcement action taken.

The 2015 WELS review recommended a joint check-testing and compliance program with the Equipment Energy Efficiency (E3) program for energy rating. This applies to dishwashers and clothes washing machines, which are regulated under both WELS and E3. The E3 program has check-testing policies and regimes in place. They include water efficiency in their check-testing, and share results with WELS.